in the
Supreme Court
of the
United States

October Term, 1969

No. 1146

AMERICAN ART INDUSTRIES, INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY TO MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

REPLY to "Memorandum for the N.L.R.B. in Opposition"

It is difficult to believe that the National Labor Relations Board has seriously (and certainly not properly or

responsively) considered the "Questions Involved" in the "Petition for Writ of Certiorari"; examination of the "Memorandum for the National Labor Relations Board in Opposition" reveals that the Board, whether by design or by inability to discover a plausible argument, has failed and refused to face up to the issues contained in the Petition.

The reference to factual issues as being the basis of the Petition is not only misleading but a concoction to brush aside and avoid reality. The Petition, for example, establishes, re the Board's decision(s), as approved by the lower appellate court, the following:

A that there was and is a misuse and misapplication of cases, including but not limited to United States vs White (354 U.S.118) Bannon Mills Inc. (146 N.L.R.B. 611) and N.L.R.B. vs. Gissel (395 U.S. 575), to establish violation(s).

B that there was and is an almost arrogant refusal to put to use cases, including but not limited to Curcio vs U.S. (354 U.S. 118) N.L.R.B. vs Walton (369 U.S. 404) Wheeler vs N.L.R.B. (314 F2d 260) Hagopian vs N.L.R.B. (395 F2d 947), applicable to the facts even as found, as contrasted with improper factual conclusions, which in truth did occur to the extent such erroneous findings hit one in the face like a Mack Sennett pie, and with the same devastating effect.

C that the decision sought to be reviewed is, with regard to all of the supposedly 8(a) violations, in conflict with decisions of other Courts of Ap-

peal (see Petition) and in more than one instance in conflict with decisions of this very Court White, Walton, *Curcio* and even Gissell, supra.

D that the remanding referred to by the Board, on page three (3) of the "memorandum," has nothing to do with prematureness for it is not the subsequent erroneous action of the Board that is presently complained of, but, instead, the refusal to dismiss the 8(a)(5) because of the admitted inability of the employees to read or write, as a result of a language barrier, and even more importantly for the reason that the *cards*, where obtained, were *procured as a direct result of violence*, duress and other unlawful attendant circumstances; it is not the *ripeness* of the last action presently being lamented, but the rottenness of the first.

All of the above is easily gleaned from the mere reading of the Petition . . . less than twenty-five (25) pages; *there is no genuine answer by the Board.* Even the reference to alleged evidentary support for the referred to 8(a)(4) violation is fallacious for the Board, there ignores the fact that the second trial examiner recited he was bound by the *just* prior issued Board decision . . . Also Walton, supra, was ignored, not even considered; forgetting the improper evidential matters, the Board has come up with a nonsensical response.

As for the factual matters/issues, they, too, are subject to review for these determinations were so abominable, and so grossly erroneous, as to be prejudicial and an abuse of discretion, even process. While petitioner contends the

law requires a reversal without any review of the facts, a hard cold look, with a jaundiced eye, should be had and taken; for there here exists an obvious departure from the essential requirement(s) of law. The lower appellate court recognized the dubiousness of the entire proceeding(s) for it found "*a substantial conflict in the evidence*" (App 7), something the Board in its infinite wisdom (so called expertise) wouldn't acknowledge in the escape from reality with its incredible credibility findings. The Board has simply used its magic words, credibility and expertise as the *excuse* for findings which are to say the least, injudicious. As previously urged, it is about time the excuse (expertise and credibility findings), not the reason, for improper and truly unjust determinations be corralled, if not eliminated entirely.

But, as stated, one does not need rely on impropriety of the evidentiary findings to see the error committed; nor even is it necessary to resort to the constitutional violations of Foster's rights, most material to the matter at hand. A simple look to the cases material should, and does, require the issuance of the writ.

Respectfully submitted

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